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TO RUEHC/SECSTATE WASHDC PRIORITY 3361

INFO RUEHXC/ALL US CONSULATES IN MEXICO COLLECTIVE PRIORITY

RUEHGV/USMISSION GENEVA PRIORITY 1043

RUCPDO/DEPT OF COMMERCE WASHINGTON DC PRIORITY

RHMFIS/DEPT OF HOMELAND SECURITY WASHINGTON DC PRIORITY

RHMFUU/DEPT OF JUSTICE WASHINGTON DC PRIORITY

RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY

RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY

UNCLAS SECTION 01 OF 02 MEXICO 002866

SIPDIS

STATE FOR EEB/IPE RACHEL WALLACE

STATE PASS USTR FOR TANUJA GARDE

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#)

SUBJECT: BILL INTRODUCED TO STRENGTHEN IP PROTECTION

11. (U) Summary: As part of the Calderon Administration's comprehensive strategy against organized crime, a ruling party Senator has introduced a bill to amend the Mexican Customs Law and give Mexican customs officials' additional tools to protect trademark owners. The proposed legislation authorizes customs officials to detain suspected counterfeit goods for up to five days and calls for the establishment of a customs trademark registry. This initiative has been well-received within both the public and private sectors, and eventual approval is likely. End Summary.

12. (U) On Tuesday, September 7, PAN Senator Jorge A. Ocejo Moreno introduced a bill to enhance the ability of the Mexican General Customs Administration (Aduanas) to stop the importation of counterfeit goods. Under the proposed bill, Aduanas would be authorized to detain suspected counterfeit goods for up to five days, in order to give trademark owners and Mexican authorities adequate time to secure appropriate action. Currently, customs officials are not authorized to detain suspicious goods. Instead, under Article 148 of the Mexican Customs Law (MCL), Aduanas may retain goods and hold them in custody if ordered to do so by a court, a public prosecutor, or an administrative authority. However, Article 149 of the MCL places the burden on the trademark owner to request such an action, and goods are often released into circulation before the authorities can act upon the request. This bill would amend the contents of Articles 148 and 149 of the MCL and grant Aduanas the legal faculties to seize temporarily the imports of counterfeit goods.

13. (U) This proposed legislation does not remove the burden from the trademark owner to launch a judicial or administrative action of seizure, nor does it award the same ex-officio authority to customs officials as they are accorded in the United States and elsewhere, but it does grant government officials and the private sector sufficient time to cooperate with each other and help deter the flow of counterfeit goods. It also appears to bring Mexico into greater compliance with international norms as stipulated in Article 58 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

14. (U) Aduanas uses a random inspection system, through which it inspects only about 7% of the merchandise that enters Mexico. In 2008, Aduanas has performed 78 seizures of more than 32 million counterfeit goods, after rights holders secured actions ordering them to do so. The number of seizures is up from 2007 (66), in which almost 43 million pirated goods were seized.

15. (U) Aduanas often lacks the necessary information to identify counterfeit goods and notify trademark owners. The proposed legislation also calls for the creation of a database known as the Padrón Unico de Marcas de Importación, or the Central Registry of Marks of Importation. This database would function much like the Intellectual Property Rights Recordation system in the United States, and similar registries in the European Union, Argentina and Peru. Trademark owners would provide a copy of their certificate of registration, the names of authorized importers and distributors, contact information for a legal representative, and other important information. Aduanas and the Mexican Institute of Industrial Property (IMPI) have been working to realize such a database for some time, trying to match both agencies' registration systems. Aduanas uses taxpayers' registration numbers, called RFC, and IMPI uses a different trademark registration number. This database is expected to be up and running by December 2008, and before the proposed legislation is likely to come into effect.

16. (U) An IMPI official told Econoff that the information to be included in the database would be at the request of interest parties. IMPI would be charged with reviewing and confirming that the trademarks and information provided by the requester are valid.

17. (U) Both Aduanas and IMPI have reacted positively to this initiative. Both IMPI and Aduanas are providing advice to the Senate in order to strengthen the proposed legislation, such as what procedures must be taken should

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the detained shipment be found to actually contain counterfeit goods. The American Chamber is also supportive, and various members have told EconOff that they will lobby for its swift approval.

18. (U) Congressional approval of this proposed amendment to the MCL is likely; however, this legislative session is full with energy reform legislation and next year's federal budget pending congressional review. The same holds true for a pending bill that would amend the Mexican Penal Code and the Law of Industrial Property to provide federal prosecutors the authority to pursue pirates and counterfeiters ex officio. This "ex officio" bill passed the lower Chamber in April and now awaits Senate action. The question is not whether the Senate will support these bills (Note: EconOff thinks it will. Post's robust and continued cooperation with the GOM on IPR issues, with the assistance of the private sector, DOJ, DOC, DHS and USPTO, has had a positive influence on the perception and protection of IP in Mexico. End Note.); it is whether the Senate will be able to focus its attention on these IP issues.

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